

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION

OLIVIA Y., *et al.*

PLAINTIFFS

v.

CIVIL ACTION NO. 3:04CV251LN

HALEY BARBOUR, as Governor of the State of Mississippi, *et al.*

DEFENDANTS

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**PLAINTIFFS' REPLY IN FURTHER SUPPORT OF THEIR  
MOTION TO COMPEL DOCUMENTS RESPONSIVE  
TO PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

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Defendants, in their Memorandum and Response to Plaintiffs' motion to compel ("Response"), make no effort to deny that the specific documents identified and sought in Plaintiffs' motion are responsive and have not been produced. The Defendants having failed to legally justify or even explain their failure to produce, the requested documents should be compelled.

Plaintiffs have sought the assistance of the Court only after numerous attempts to have the specific responsive documents sought herein were met with Defendants' silence or unjustified refusal. Defendants' Response provides the Court more of the same. Defendants are silent as to the deficiencies identified by Plaintiffs' motion. Instead, Defendants vaguely argue that because they have been made to produce many pages of documents in this complex class action litigation on behalf of a plaintiff class of over 3,000 foster children statewide, they should not have to respond further.

Only the two points that are argued at all by Defendants warrant a reply. With respect to Plaintiffs' Request No. 34 for the Program Improvement Plans ("PIPs") submitted to the U.S. Department of Health and Human Services (USDHHS), Defendants mischaracterize the nature

of these PIPs as internal deliberative documents subject to deliberative privilege protection (Defs.' Resp. at 7). Far from deliberative, however, the PIP is a document mandated by and submitted to the federal government by the Defendants subsequent to Mississippi's failure to meet federal child welfare standards. *See* 45 C.F.R. § 1355.35(a)(1). Plaintiffs' Request No. 34 does not ask for internal drafts of the PIPs, but only those PIPs submitted to the USDHHS by Defendants.<sup>1</sup>

As to Plaintiffs' Requests Nos. 21-23 & 30, Defendants produced responsive documents that identified attachments, but the attachments sought were not produced. Plaintiffs seek the complete documents with the missing attachments because the selected attachments are themselves responsive to the Requests, both independently and as part of the produced document. Here, as with all the other cited deficiencies, Plaintiffs have more than a "mere suspicion" that the response is incomplete. *Gray v. Faulkner*, 148 F.R.D. 220, 223 (N.D. Ind. 1992).

WHEREFORE, Plaintiffs respectfully request this Court to compel the requested documents pursuant to Rule 37 of the Federal Rules of Civil Procedure.

Respectfully submitted, this the 14th day of June, 2005.

/s Melody McAnally  
 W. Wayne Drinkwater, Jr. (MBN 6193)  
 Melody McAnally (MBN 101236)  
 BRADLEY ARANT ROSE & WHITE LLP  
 188 East Capitol Street, Suite 450  
 Jackson, MS 39201  
 Telephone: (601) 948-8000  
 Facsimile: (601) 948-3000

Stephen H. Leech (MBN 1173)  
 850 East River Place, Suite 300  
 Jackson, MS 39202

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<sup>1</sup> Defendants finally produced on June 9, 2005 the PIP approved two months earlier by USDHHS. The three rejected PIPs have not been produced.

Telephone: (601) 355-4013

Marcia Robinson Lowry (MBN 43991 *pro hac vice*)  
Eric E. Thompson (MBN 43993 *pro hac vice*)  
Corene Kendrick (MBN 43989 *pro hac vice*)  
Tara S. Crean (*pro hac vice* pending)  
CHILDREN'S RIGHTS  
404 Park Avenue South, 11th Floor  
New York, NY 10016  
Telephone: (212) 683-2210

John Lang (MBN 43987 *pro hac vice*)  
Christian Carbone (MBN 43986 *pro hac vice*)  
Eric Manne (MBN 43988 *pro hac vice*)  
LOEB & LOEB LLP  
345 Park Avenue  
New York, NY 10154  
Telephone: (212) 407-4000

*PLAINTIFFS' COUNSEL*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 14, 2005, I electronically filed the foregoing and all enclosures with the Clerk of the Court using the ECF system, which sent notification of such filing to the following:

Betty A. Mallett, Esq.  
Dewitt L. Fortenberry, Jr, Esq.  
McGlinchey Stafford, PLLC  
200 South Lamar Street, Suite 1100  
Jackson, MS 39201

Harold E. Pizzetta, III, Esq.  
Assistant Attorney General  
General Civil Division  
Carroll Gartin Justice Building  
430 High Street  
Jackson, MS 39201

*Attorneys for Defendants*

s/ Melody McAnally